

**DEFENDANT RESPONSE TO PLAINTIFF CFTC'S INITIAL RESPONSE TO DEFENDANT
v. MCDONNELL'S OPPOSITION TO PLAINTIFF NOTICE OF WITHDRAWAL OF JURY
DEMAND**

ATTACHMENT 2

What Happens During an Evidentiary Hearing?

By Beverly Bird - Updated January 29, 2018



Whenever there's a trial – either civil or criminal – the possibility exists that the court will schedule an evidentiary hearing. By definition, an evidentiary hearing is any court proceeding that involves witnesses giving testimony under oath. In criminal matters, particularly those that involve felonies, evidentiary hearings are standard operating procedure. They can also take place in civil matters, such as divorce and personal injury lawsuits.

Tip

At an evidentiary hearing, the judge hears arguments from both the prosecutor and defense to determine if there is enough evidence to have the defendant stand trial.

The prosecutor calls witnesses to testify and introduces physical evidence to show there is probable cause for the trial to move forward. The defense attorney will usually cross-examine the witnesses.

Criminal Proceedings

In criminal matters, the preliminary hearing, or prelim, is an evidentiary hearing, scheduled early in the process because the future of the case hinges on what happens at this proceeding. Criminal cases typically begin with the state – either the district attorney or prosecutor’s office – filing a complaint against the defendant. The defendant then appears at an arraignment where he can enter a plea of guilty or not guilty. He’s advised of the charges against him and of his right to an attorney; in felony cases, the next step is usually the prelim.

Probable Cause

At the preliminary hearing, the state has the burden to convince the court that a crime has occurred and there’s reason to believe the defendant committed it. The judge must find that probable cause exists for the case to proceed to trial. His alternative is to throw the case out, dismissing the charges if the state cannot establish there’s good reason to move forward. The defendant isn’t found guilty at this hearing. The court simply finds that enough evidence exists for a jury to decide whether he’s innocent or guilty as charged.

Testimony and Evidence

In criminal matters, it’s typically the prosecution that presents witness testimony and other evidence at an evidentiary preliminary hearing. The defendant doesn’t have an opportunity to prove his innocence at this hearing – that will come later at trial if he’s held over and the case against him is not dismissed. Therefore, presenting witnesses at this stage serves no real purpose for the defendant. It would only prematurely expose aspects of the defense that he will later present. The defense can cross-examine state witnesses, however, in an effort to prove the prosecutor has not met his burden to establish the defendant likely committed the crime.

Civil Cases

Parties often file motions in civil matters prior to trial, such as to compel the other side to cooperate in an exchange of information called discovery or to request a summary judgment – an early decision by the court that certain facts, or even the whole case, make it evident that a trial is unnecessary because they’re indisputable and inarguable. Motion hearings may be evidentiary or simply consist of oral argument.

Often, only the parties or their attorneys speak to the court, and this is called oral argument. But if the judge wants to hear from others who have information regarding the case, he may schedule an evidentiary hearing instead of, or in addition to, oral argument.

